

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8048 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HZ VYAS

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner No. 1
MR MENGDEY, Ld. AGP for Respondent No. 1
RULE SERVED for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 07/04/2004

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner has retired as Mamlatdar and Executive Magistrate on 31-7-1996 from service of the State Government. It is the case of the petitioner that he would have been entitled for payment of provisional

pension, computed pension and the gratuity amount. However, there was delay in disbursement of the aforesaid amount and ultimately the amount is paid to the petitioner on 21-9-1999. The petitioner had addressed the letter to this Court (Coram: S.K. Keshote, J.). On the basis of the said letter, suo motu powers were exercised by treating the letter as SCA No.11428/2000 and ultimately on 3-11-2000 this Court (Coram: S.K.Keshote, J.) directed for placing the matter before the High-power Committee and also directed that the petitioner would be entitled for interest at the rate of 18% if there is any delay in making payment. It appears that thereafter, on 1-12-2000 the High-power Committee of the Government considered the matter and found that the amount of gratuity was payable and since there is a delay as per the policy of the government the petitioner would be entitled to the interest at the rate of 12% on the delayed payment of gratuity. However, so far as the amount of pension is considered it was found by the High-power Committee that there is no policy of the government to pay interest on pension and commuted pension and, therefore, the Committee did not recommend for payment of interest over the amount of pension and commuted pension. Thereafter, in pursuant of the recommendation of the High power Committee, the petitioner has been paid interest of Rs.51,036/= towards delay caused for payment of the gratuity amount.

2. Pending the aforesaid, the Division Bench of this Court (Coram: D.M.Dharmadhikari, C.J. - as he was then & P.B.Majmudar, J.) in LPA No.334/2001 on 18-4-2001 laid down that even when suo motu powers are exercised by any Hon'ble Judge of this Court, after initiating the process the matter is required to be sent to the Hon'ble the Chief Justice and the matter is to be considered as per the roster notified by the Hon'ble the Chief Justice. It appears that thereafter, in view of the aforesaid Division Bench's judgement of this Court, this Court (Coram: S.K.Keshote, J.) passed the order dated 25-4-2001, whereby the earlier order dated 3-11-2000 was recalled. Therefore, as a consequence thereof, the position is that there is no order passed by this Court for payment of the interest on the delayed payment of gratuity or the pension.

3. The petitioner under the circumstances has approached to this Court for quashing of the decision of the Committee (Annexure "C") dated 1-12-2000 and for giving directions to the respondent authority to pay the interest @ 18% per annum on all pensionary benefits and on the amount of gratuity.

4. Heard Mr.Mehta, learned Counsel for the petitioner and Mr.Mengdey, learned AGP for the respondents.

5. There is no dispute on the point that there is delay caused in payment of the amount of gratuity as well as in the payment of provisional pension and commuted pension. It is the case of the State Government that some preliminary inquiry was pending at the time when the petitioner retired and ultimately as the outcome of the preliminary inquiry it was decided by the Government not to initiate action departmentally and as a result thereof, the delay has been caused in making the payment of amount. In my view, the awarding of interest to a government servant for delayed payment on retiral benefits may stand on two considerations; (i) may be by way of exemplary cost with a view to have deterrent effect, so that such type of instances may not be repeated in future; and (ii) with a view to compensate the employee concerned for non-availability of the amount because of the failure on the part of the government machinery in making payment in time. In the case of former, it is to be demonstrated that it was with malafide purpose the delay was caused in making payment. If such is the situation, the Court may be inclined to exercise the power for awarding higher rate of interest with a view to set example and to have deterrent effect and in such cases the Court may also permit the recovery of the amount of interest to the Government from erring officer also, whereas in latter case, it would be by way of principles prevailing as per common law for compensating the loss caused to the employee concerned.

6. If the present case is examined, keeping in view the aforesaid aspect, it transpires that in the affidavit-in-reply, at paras 6 and 7, it has been stated that the preliminary inquiry under Rule 189(A) of BCSR was pending and ultimately on 24-11-1997 the decision is taken to drop the departmental proceedings. It is further stated that based on the said decision the further steps were taken for finalization of the pension. There were some inquiries and objections raised by the authority and it took some time for clearing the objections which resulted into delay for making the payment of gratuity, pension and commuted pension. It is also stated that as such there was no intention on the part of anybody for delaying the payment. So far as the pendency of the preliminary inquiry is concerned, there is also reference to the said aspect in the proceedings of the decision of the High Power Committee dated

1-12-2000 at para 1. If the delay has been caused on account of the pendency of the aforesaid preliminary inquiry and finalization of the said inquiry proceedings and if the delay has been caused on account of certain objections by the department, it would not be a case for awarding of interest to set an example or with a view to have the deterrent effect. As such, even the petitioner has also not attributed or alleged any malafide or any intentional lapse on the part of the officer concerned. Therefore, the matter deserves to be considered from the latter case namely; the interest deserves to be awarded with a view to compensate the loss or damage caused to the employee concerned for non-availability of the amount. It may also be relevant to consider that even if there is a fault on the part of any of the officers of the government, the fact remains that the government has retained the said amount and utilized the same. Had the amount been disbursed in time, the employee concerned could have utilized the same, for personal purpose, or for investment in the bank. In the matter where the interest is to be awarded for compensating the loss of money, the party who is deprived of the amount can reasonably claim for bank rate of interest i.e. interest he would have earned on the amount, if disbursed in time, by way of investment in the FDR or otherwise. Even the judicial notice can be taken for decline in the rate of interest for the purpose of awarding of interest. Therefore, considering the facts and circumstances I find that the petitioner, at the most, would be entitled to the interest at the rate of 9% for the period during which the delay was caused in disbursement of provisional pension and commuted pension.

7. It does not come on record as to the exact date on which the petitioner would have been entitled for the provisional pension or commuted pension. Mr.Mehta has tried to show that the petitioner would be entitled for such amount immediately on retirement, but I am not inclined to accept the said aspects, because even after retirement, some reasonable time would be taken in processing of the file and disbursement thereof, but such period would not, in any case, exceeds a reasonable period of 90 days from the date of retirement. It will be for the authority to examine the lawful entitlement of the petitioner on the date as per the rules and statutory requirement to finalize the pension. The delay will be counted from such date and the interest will accrue at the rate of 9% from such date till actual payment made on 21-9-1999.

8. So far as the amount of delayed payment of

gratuity is concerned, in my view, it would stand on a different footing. The government has even otherwise awarded interest at the rate of 12% as per the policy of the government for delayed payment of gratuity and the policy of the government to pay 12% interest in delayed payment of gratuity cannot be said to be unreasonable or arbitrary.

9. Mr.Mehta, learned Counsel appearing for the petitioner placed reliance upon the decision of this Court in the case of "Suo Motu for B.K.Dudani v. State of Gujarat & Ors.", reported in 2002(1) GLR, 137 for awarding interest at the rate of 18% and upon the decision of the Apex Court in the case of "Vijay L. Mehrotra v. State of U.P. and others" (supra) for pensionary benefits and, therefore, the petitioner would be entitled for interest at the rate of 18%.

10. Firstly both the decisions upon which reliance is placed by Mr.Mehta cannot be read as laying down the principles of awarding the interest at the rate of 18% in all cases. As observed earlier awarding of interest may depend upon the facts and circumstances of each case. In the case of "Vijay L. Mehrotra" (supra), the Apex Court has recorded at para 4 that there is absolutely no reason or justification for not making the payments for months together", whereas in the present case, as observed earlier, it cannot be said that there was absolutely no justification on the part of the government when the preliminary inquiry was pending at the time when the petitioner retired from service. Therefore, the said decision would be of no help to the petitioner.

11. In the case of "Suo Motu for B.K.Dudani" (supra), at para 4 the Court has recorded the finding that "It is a clear case because of negligence, recklessness and carelessness of the officers long time is taken for the payment of death-cum-retirement gratuity to the petitioner." Such is not the case of the petitioner in the present petition and, therefore, I am of the view that the said decision is also not applicable to the present case.

12. In view of the aforesaid, the petition is partly allowed to the extent that the respondents are directed to consider the exact delay caused in making the payment of provisional pension, commuted pension and final pension in light of the observations made hereinabove and to pay the interest at the rate of 9% for the delay from such date on which the aforesaid amount of pension and commuted pension became due to the date of actual payment

has been made and disburse the said amount of interest. The aforesaid exercise of computation of delay and disbursement of the interest shall be completed as early as possible, but not later than three months from the date of the receipt of the order of this Court. The other reliefs prayed in the petitions are not granted.

13. The rule is partly made absolute. Considering the facts and circumstances the petitioner would be entitled to a reasonable cost and the cost is quantified to Rs.2,500/= which respondents shall pay in addition to the aforesaid amount of interest to the petitioner, within the aforesaid time limit.

7.4.2004 (Jayant Patel, J.)

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